

MINUTES
FINANCE COMMITTEE MEETING
6:30 P.M., JANUARY 6, 2020
A/V CONFERENCE ROOM

Joseph Jenkins, Chairperson, called the meeting of the Charleston City Council Committee on Finance to order at 6:30 p.m., January 6, 2020, in the Audio/Visual Room in City Hall.

A silent roll was taken by the Clerk and a quorum was established. The following committee members were present:

Joseph Jenkins, Chair
Bobby Reishman, Vice Chair
Brent Burton
Mary Beth Hoover
Will Laird
Keeley Steele

I. DISCUSSION:

a. Councilmember Reishman asked for unanimous consent to dispense with the reading of the minutes for the December 16, 2019 meeting and that they be approved as distributed. There was no objection and the minutes were approved.

II. RESOLUTIONS:

- a. Resolution No. 276-20 - Authorizing the release of any claims by the City in the pending litigation styled *U.S. Bank National Association, as Trustee, as successor in interest to Bank of America, National Association, as successor by merger to LaSalle Bank National Association, as trustee for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP28 and Charleston Urban Renewal Authority and City of Charleston v. Charleston Town Center SPE, LLC and Charleston Town Center Company, Limited Partnership, Charleston Town Center Parking Limited Partnership, and The Bank of New York Mellon, as trustee for the Series 1996C Subordinate Capital Appreciation Parking Facility Refunding Bonds*, Kanawha County Circuit Court Civil Action No. 17-C-1527.

Whereas, the City is an Intervenor in the above-referenced pending litigation, but has not raised any claims of its own; and

Whereas, the pending litigation is scheduled for mediation on January 10, 2020; and

Whereas, in order to fully resolve the pending litigation, the parties are likely to request a release of all claims by the City.

Now, therefore, be it Resolved by the Council of the City of Charleston, West Virginia:

That the City Council hereby authorizes and approves the release of any claims by the City in the pending litigation styled *U.S. Bank National Association, as Trustee, as successor in interest to Bank of America, National Association, as successor by merger to LaSalle Bank National Association, as trustee for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP28 and Charleston Urban Renewal Authority and City of Charleston v. Charleston Town Center SPE, LLC and Charleston Town Center Company, Limited Partnership, Charleston Town Center Parking Limited Partnership, and The Bank of New York Mellon, as trustee for the Series 1996C Subordinate Capital Appreciation Parking Facility Refunding Bonds*, Kanawha County Circuit Court Civil Action No. 17-C-1527. The City Council authorizes the Mayor, City Manager, and City Solicitor to take all necessary steps to resolve the pending litigation up to and including providing a release of all claims by the City, provided that this resolution does not authorize the payment of any City funds.

City Attorney, Kevin Baker, added that the pending litigation is set for mediation this Friday. He stated that while the City does not have any actual claims in the litigation, if the litigation is resolved, the involved parties will then want a release from the City.

Councilmember Snodgrass abstained from voting, out of an abundance of caution, as she owns bonds on the parking garage.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative, with one abstention, Chairperson Jenkins declared Resolution No. 276-20 approved.

- b. Bill No. 7856 - A Bill granting StayLock Storage Acquisition I, LLC ("StayLock Storage"), an easement in a portion of the fee or right-of-way of the City of Charleston in the 1300 block of Hansford Street for the purpose of operating, maintaining, repairing and replacing an existing skywalk connecting 1352 Hansford Street to 1347 Hansford Street, generally in conformance with the drawing attached as Exhibit A hereto.

BE IT ORDAINED BY THE CITY COUNCIL OF CHARLESTON, WEST VIRGINIA

Subject to the minimum terms and conditions contained herein,

StayLock Storage, and its lessees, successors or assigns, are hereby granted an easement in a portion of the fee right-of-way for the purpose of operating, maintaining, repairing and replacing an existing skywalk, generally in conformance with the drawings which are attached hereto, incorporated herein, and made a part hereof. The easement is further defined to be 11 feet by 42 feet running between 1352 Hansford Street and 1347 Hansford Street containing approximately 462 square feet more or less; and

StayLock Storage, its lessees, successors or assigns, shall indemnify, defend and save the City harmless from and against any damages to any person or property by reason of the operation, maintenance, repair or replacement of the skywalk by StayLock Storage, its lessees, successors and assigns; and

StayLock Storage shall maintain general liability insurance in the minimum amount of \$1,000,000.00 and shall name City as an additional insured for purposes of the easement and the indemnity provisions specified in the easement agreement. All applicable policies shall provide primary coverage, shall reflect that StayLock Storage is responsible for any and all deductibles and shall otherwise be in such form and with such endorsements and riders as City shall reasonably specify; and

Should there become a compelling public need for the area granted in the easement, the parties agree to cooperate in good faith to reach a resolution regarding removal, modification, or replacement of the skywalk without the necessity of condemnation proceedings; and

That upon review and approval by legal counsel for the City, and the City Engineer of the City of Charleston, the Mayor or City Manager of the City of Charleston are hereby authorized to execute an easement agreement and any other documents related hereto for the purpose of granting an easement for the purpose of operating, maintaining, repairing and replacing a skywalk and conditioned upon StayLock Storage, and its lessees, successors or assigns, consistent with paragraphs 1, 2, 3, 4, and 5 of this ordinance, and the payment of the appraised value of Seven Hundred and Forty dollars and no cents (\$740.00).

Baker added that as a result of a transition and selling of the warehouses to a new owner, it was discovered that there was never an official easement for the skywalk. A certified appraiser set the value of \$740.

Councilmember Jenkins confirmed that they will be purchasing the easement.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Bill No. 7856 approved.

DEED OF EASEMENT

THIS DEED OF EASEMENT is made and entered into this ____ day of _____, 2020, by and between THE CITY OF CHARLESTON, a West Virginia municipal corporation, party of the first part, hereinafter referred to as the "City", and STAYLOCK STORAGE ACQUISITION I, LLC, party of the second part; hereinafter referred to as "StayLock Storage";

WHEREAS, Bill No. ____, attached hereto as Exhibit 1 was duly passed by the City Council of the City of Charleston, West Virginia, on ____, 2020, granting an easement for use of the air rights above the City's right-of-way between the buildings located at 1352 Hansford Street and 1347 Hansford Street in the City of Charleston for the purpose of operating, maintaining, repairing, and replacing an existing skywalk, subject to certain restrictions; and WHEREAS, the easement for the existing skywalk is granted for the purposes of operating, maintaining, repairing, and replacing a skywalk above the City's right-of-way between the buildings located at 1352 Hansford Street and 1347 Hansford Street; and WHEREAS, the existing skywalk is more particularly located above a footprint defined to be 11 feet by 42 feet running between 1352 Hansford Street and 1347 Hansford Street containing approximately 462 square feet more or less; and

WHEREAS, Bill No. ____ authorized the Mayor or the City Manager of the City of Charleston to execute and acknowledge a proper deed granting an easement for the existing skywalk, subject to certain conditions, and including an easement to use so much of the City's property as reasonably necessary to maintain, repair, and replace the existing skywalk;

NOW THEREFORE, WITNESSETH: That for and in consideration of the sum of SEVEN HUNDRED FORTY DOLLARS (\$740.00), cash in hand paid, the receipt of which is hereby acknowledged, the party of the first part does hereby GRANT and CONVEY unto the party of the second part its successors and assigns, a perpetual easement to use of the air rights above the City's right-of-way between the buildings located at 1352 Hansford Street and 1347 Hansford Street in the City of Charleston for the purpose of operating, maintaining, repairing and replacing an existing skywalk, which is more particularly located above a footprint defined to be 11 feet by 42 feet running between 1352 Hansford Street and 1347 Hansford Street and containing approximately 462 square feet more or less. The location of the easement is depicted in Exhibit A, which is part of Exhibit 1, attached hereto and incorporated herein.

The easement for the use granted herein is subject to the following conditions: 1) that the skywalk within the easement area will be subject to inspection and approval by the City Engineer or his or her designee; 2) that any repairing or replacement of the skywalk shall conform to all applicable Federal, State and City laws and be performed in a workmanlike manner in accordance with plans, drawings, and specifications subject to review and approval by the City Engineer; 3) that StayLock Storage, its lessees, successors, or assigns shall indemnify, defend, and hold harmless City from and against any claims for damage or injury to any person or property by reason of the operation, use, maintenance, repair or replacement of the skywalk by StayLock Storage, its lessees, successors, or assigns; 4) that, in the event that the skywalk ceases to comply with all applicable Federal, State and City laws and regulations, or the skywalk constructed in the easement area otherwise become unsafe and StayLock Storage or any successor owner fails after a reasonable notice and cure period to make all necessary repairs, the easement shall cease, terminate and be of no further effect, and StayLock Storage or the successor owner, as applicable, shall, upon receiving written notice from the City, immediately and at the expense of StayLock or the successor owner, as applicable, remove the skywalk from

the City's air rights above the City property; and 5) in the event that the City should have a substantial and compelling public need for the City property affected by the easement, the City and StayLock Storage shall cooperate in good faith to reach a resolution regarding removal, modification, or replacement of the skywalk without the necessity of condemnation proceedings. To the extent that the skywalk requires removal pursuant to 5) above, the City, at its expense, may remove the skywalk from the City's property, and this easement shall terminate.

DECLARATION OF CONSIDERATION OF VALUE: The City of Charleston declares that this conveyance is not subject to the West Virginia State Excise Tax on the privilege of transferring real estate for the reason that this is a conveyance from a political subdivision of the State of West Virginia.

WITNESSETH the following signatures:

THE CITY OF CHARLESTON,
a West Virginia municipal corporation,

ATTEST:

City Clerk

BY _____
Mayor/City Manager

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by _____, the Mayor/City Manager of THE CITY OF CHARLESTON, a West Virginia municipal corporation, for and on behalf of said municipal corporation.

Notary Public

This instrument was prepared by:

Kevin Baker (WV Bar #10815), City Attorney, P.O. Box 2749, Charleston, WV 25330

- c. Bill No. 7857 - A BILL to amend and reenact Section 110-311 of the Municipal Code of the City of Charleston, known as the "Public Utilities Tax," relating to updating and clarifying the ordinance to be consistent with current court precedent and allow for consistent application of the tax.

WHEREAS, prior to 2006 the Public Service Commission required all motor carriers and garbage haulers who engage in interstate disposal of waste to obtain a permit and a certificate of convenience and necessity pursuant to West Virginia Code § 24A-2-5, as required from intrastate motor carriers and garbage haulers; and

WHEREAS, in 2006 the United States District Court for the Southern District of West Virginia held in *Harper v. PSC*, 427 F. Supp. 2d 707, 724, that West Virginia Code § 24A-2-5 is invalid insofar as it requires solid waste haulers engaged in the interstate transportation of solid waste to obtain a certificate of convenience and necessity from the PSC prior to providing those services; and

WHEREAS, the current ordinance has yet to reflect the change in permit and certification requirements for motor carriers and solid waste haulers engaged in interstate transportation; and

WHEREAS, some solid waste haulers and motor carriers continue to engage in the business of providing a public utility within the City of Charleston without PSC permit or certification requirements and may not be taxed in the same manner as those with PSC permit or certification requirements under the ordinance as currently provided.

Now, therefore, be it ordained by the Council of the City of Charleston:

That Section 110-311 of the Municipal Code of the City of Charleston, known as the "Public Utilities Tax" is hereby amended and reenacted to read as follows:

CHAPTER 110 – TAXATION

ARTICLE V – PUBLIC UTILITIES TAX

Sec. 110-311. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Public utility service means all services and tangible personal property purchased within the city from a seller, operating under a public utility license or permit from the public service commission of the state or which is classified as a public utility with the public service commission of the state, including but not limited to telephone service, electric service, gas service, including bottled or liquid gas, motor carriers and garbage haulers, if the seller is classified as a public utility subject to the jurisdiction of the public service

commission of the state, and water service, if purchased, used or consumed within the corporate limits.

Purchaser means every person who purchases, uses or consumes a public utility service.

Seller means every person, whether a public service corporation, a municipality or a private corporation, classified as a public utility with the public service commission of the state, who sells, furnishes or supplies a public utility service.

User means the owner or tenant of private residential property or the owner or tenant of property used for commercial or industrial purposes, in every combination, of every kind and description.

Baker added that this small, technical change is being done to conform with a 2006 case that can require waste haulers to be recognized as a public utility and pay the public utilities tax.

Councilmember Steele asked if this would impact restaurants that have their waste oil disposed of. Baker answered that there is only one public utility that is known to not already be paying the tax. Councilmember Jenkins added that the West Virginia Public Service Commission would be determining who would be subject to this tax.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Bill No. 7857 approved.

- d. Bill No. 7858 - A Bill authorizing the release of an existing utility easement held by the City on property owned by Pingree 2000 Real Estate Holdings, LLC ("Pingree"), located at 1115 Smith Street in order to clear title of the property from an unused easement that has no public utilities and upon which a structure has already been built in exchange for consideration of five hundred dollars (\$500.00), as stated in the deed attached as Exhibit A hereto.

BE IT ORDAINED BY THE CITY COUNCIL OF CHARLESTON, WEST VIRGINIA

The City Council of the City of Charleston finds as follows:

The City of Charleston conveyed a portion of Jefferson Alley on December 4, 1974, but reserved "the existing utility easement" on the property and the City of Charleston later conveyed additional real property retaining a sewer easement along Jefferson Alley on February 15, 1996; and

The City of Charleston has determined that neither the City nor the Charleston Sanitary Board has any public utility line along the easement and has no plans to utilize the easement in the future; and

Pingree is the current owner of the real property conveyed and has approached the City of Charleston for a release of the reserved easements; and

Following an arm's length negotiation regarding the value of the reserved easement, the City of Charleston and Pingree have agreed upon consideration in the amount of \$500 to the City of Charleston for the release of the reserved easement.

Therefore, the City Council of Charleston hereby authorized the Mayor or City Manager of the City of Charleston to execute the deed attached as Exhibit A hereto and any other documents necessary to release the reserved easement and accept five hundred dollars (\$500.00) consideration in exchange.

Baker added that new property owners are trying to make sure they have a clear title. There is no real reason for the City to retain the easement.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Bill No. 7858 approved.

THIS QUIT CLAIM DEED, dated this the 7th day of November, 2019, by and between THE CITY OF CHARLESTON, a municipal corporation, hereinafter sometimes referred to as GRANTOR, and, PINGREE 2000 REAL ESTATE HOLDINGS, LLC, hereinafter sometimes referred to as GRANTEE,

WHEREAS, by deed dated the 4th day of December, 1974, and recorded in the Office of the Clerk of the County Commission of Kanawha County, West Virginia, in Deed Book No. 1749, Pg. 276, the Grantor herein conveyed real property, briefly described as part of Jefferson Alley, but reserved “the existing utility easement” on said real property being conveyed; and

WHEREAS, by deed dated the 15th day of February, 1996, and recorded in said Clerk’s Office, in Deed Book No. 2392, Pg. 203, the Grantor herein conveyed real property, also briefly described as part of Jefferson Alley, but reserved “a sewer easement for the full length and width of the above described right-of-way [Jefferson Alley] for the purpose of construction, maintenance, repair and removal of storm and sanitary sewer lines”, and, further, restricted any person to “construct improvements, plant trees or other vegetation, or take any other action which would interfere with this easement, nor alter the present surface profile or contour of the subject right-of-way by more than one (1) foot without the written permission of the Sanitary Board of the City of Charleston and the City Engineer of the City of Charleston”; and

WHEREAS, it has been determined that there are no existing utilities or sewers lines under the real property conveyed by said deeds referred to above; and

WHEREAS, the GRANTEE is the current owner of the real property conveyed by said deeds as conveyed unto GRANTEE by R. H. Kyle Furniture Company, by deed dated the 15th day of February, 2019, and recorded in said Clerk’s Office in Deed Book No. 3024, Pg. 757, and is requesting that GRANTOR release said reserved easements, and restriction; and

WHEREAS, the GRANTOR is willing to release said reserved easements, and restriction for the sum of \$500.00;

NOW, THEREFORE, WITNESSETH: That for and in consideration of the sum of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the Grantor does hereby GRANT, CONVEY, REMISE, RELEASE and FOREVER QUITCLAIM unto said PINGREE 2000 REAL ESTATE HOLDINGS, LLC, the following described interest in real estate, to-wit:

The "existing utility easement" as reserved in deed dated the 4th day of December, 1974, and recorded in the Office of the Clerk of the County Commission of Kanawha County, West Virginia, in Deed Book No 1749, Pg. 276, and, further, the sewer easement for the purpose of construction, maintenance, repair and removal of storm and sanitary sewer lines, as reserved in deed dated the 15th day of February, 1996, and recorded in said Clerk's Office in Deed Book No. 2392, Pg. 203;

The GRANTOR further releases the restriction contained in said deed, Deed Book No. 2392, Pg. 203, which states that "no person shall construct improvements, plant trees or other vegetation, or take any other action which would interfere with this easement, nor alter the present surface profile or contour of the subject right-of-way by more than one (1) foot without the written permission of the Sanitary Board of the City of Charleston and the City Engineer of the City of Charleston", in that by this conveyance the restriction would no longer be necessary.

TOGETHER with all the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining;

TO HAVE AND TO HOLD the said premises, as above described, unto the Grantee, and to the successors and assigns of the Grantee.

DECLARATION OF CONSIDERATION OR VALUE: The Grantor hereby declares that the total value of the property conveyed by this document is \$500.00.

IN WITNESS WHEREOF, the Grantor herein has caused this deed to be executed.

THE CITY OF CHARLESTON,
a Municipal Corporation

By: _____

Its: _____

STATE OF WEST VIRGINIA
COUNTY OF CABELL, to-wit:

I, _____, a Notary Public of said State and
County, do hereby certify that _____
_____ who signed the above writing, bearing date the 7th day of November, 2019, for THE
CITY OF CHARLESTON, a Municipal Corporation, has this day in my said County, before me,
acknowledged the said writing to be the act and deed of said corporation.

Given under my hand this _____ day of November, 2019.

My commission expires _____.

Notary Public

THE CITY OF CHARLESTON,
a Municipal Corporation

By: _____

Its: _____

STATE OF WEST VIRGINIA
COUNTY OF CABELL, to-wit:

I, _____, a Notary Public of said State and
County, do hereby certify that _____,
_____ who signed the above writing, bearing date the 7th day of November, 2019, for THE
CITY OF CHARLESTON, a Municipal Corporation, has this day in my said County, before me,
acknowledged the said writing to be the act and deed of said corporation.

Given under my hand this _____ day of November, 2019.

My commission expires _____.

Notary Public

This Deed was prepared by Prunty Law Offices, Paul J. Prunty, Attorney, 430 Sixth Avenue,
Huntington, West Virginia 25701.

Councilmember Reishman motioned to adjourn the meeting.

Meeting adjourned.